



Policy Monitoring Review of Childress County's Indigent Defense Systems

March 24, 2015

Purpose of the Limited Scope Policy Monitoring Review

The Texas Indigent Defense Commission (“Commission”) is required to monitor local jurisdictions’ compliance with the Fair Defense Act (“FDA”).¹ The policy monitor conducted a limited scope review in Childress County to analyze the procedures for appointing counsel to indigent defendants in misdemeanor cases.

Factors Causing the Limited Scope Policy Monitoring Review

In May 2013, Commission staff conducted an informal review of Childress County’s processes pertaining to requests and appointment of counsel in criminal cases. During the review, staff found that Childress County’s magistrate warning form did not meet the statutory requirements found in Article 15.17(e) of the Code of Criminal Procedure.

The county’s magistrate warning form provided that a defendant had a right to request an appointed attorney if he/she could not afford one, **but did not contain a method to document whether a defendant was requesting court appointed counsel.**² According to Article 15.17(e) of the Code of Criminal Procedure, the defendant must not only be informed of the right to counsel, but also asked whether or not he/she is requesting court appointed counsel. **The defendant’s response must then be recorded.** Under Article 1.051, once a request for counsel is made, the appointing authority has three working days to appoint counsel for those deemed indigent (in counties with a population under 250,000). Staff informed county officials at the time of their visit in 2013 that the county’s magistrate warning form and processes needed to include documentation of a request for counsel, as required by Article 15.17(e).

Based on observations from the visit conducted in 2013 and no apparent change in the percentage of arrestees receiving court appointed counsel, policy monitoring staff conducted a Limited Scope Policy Monitoring Review in March 2015. See the table below showing misdemeanor appointment data in Childress County (as reported by the clerk and treasurer) and statewide. The table shows that across Texas about 42% of misdemeanor defendants received appointed counsel in FY14. For counties with a population less than 50,000, about 25% of misdemeanor defendants received appointed counsel.

Table: Childress County Court Misdemeanor Appointment Data

Year	2011	2012	2013	2014	Texas 2014
Population (Non-Census years are estimates)	7,041	7,071	7,044		
Misdemeanor Charges Added (from OCA report)	258	304	432	383	530,335
Misdemeanor Cases Paid	4	30	1	1	223,043
% Misdemeanor Charges Defended with Appointed Counsel	1.6%	9.9%	0.2%	0.3%	42.1%
Misdemeanor Trial Court Attorney Fees	\$1,450	\$2,398	\$11,550	\$400	\$38,291,611
Total Misdemeanor Court Expenditures	\$1,450	\$2,398	\$11,550	\$400	\$39,411,244

¹ Tex. Gov’t Code § 79.037(a)-(b).

² Appendix, Childress County Magistrate Warning Form.

Timeline and Methodology

The limited scope policy monitoring review of Childress County was conducted by Commission staff with a site visit on March 10, 2015. Throughout this report, all references to Commission staff use the term “monitor.” The monitor met with the county attorney and county judge and examined 20 misdemeanor case files (which included magistrate warning forms). The monitor also reviewed the local indigent defense plan and Texas Judicial Council Monthly Court Activity Reports (as reported to OCA) as part of this report.

Summary of Current Review

This limited scope monitoring review examined the procedures for appointing counsel to indigent defendants in misdemeanor cases. After arrest in Childress County, persons are booked at a central jail facility within the county and receive Article 15.17 warnings from the county judge. At the Article 15.17 hearing, the judge must determine whether probable cause exists to detain individuals, set bond, and take requests for counsel. At this time, the magistrate must provide reasonable assistance to any person requesting counsel in completing the necessary paperwork for the purpose of determining indigence.

The monitor examined twenty (20) misdemeanor cases filed in FY14 (October 2013 –September 2014) to document procedures for conducting Article 15.17 hearings and to determine whether counsel requests were ruled upon in a timely manner. Of the 20 magistrate warning forms examined by the monitor, none met the Article 15.17(e) requirement that the forms record whether arrestees requested counsel. This practice led to no court appointments. Nineteen (19) defendants pled pro se, and one (1) defendant retained counsel. No requests for counsel were noted in the case files so the monitor could not examine the timeliness of appointments of counsel.

Recommendation Regarding Methods to Administer Article 15.17 Hearings

Policy Monitoring Recommendation: For offenses with a Class B misdemeanor grade and higher, the magistrate must ask all arrestees whether they want to request counsel. The County must update its magistration form to comply with Article 15.17(e) and with its indigent defense plan. The new form must state whether the individual is requesting counsel.

Once policies are in place to take requests for counsel that comport with the statutory requirements, the county must also implement a process to timely rule on those requests and appoint counsel. After an initial request for counsel is received (whether the request was made at the Article 15.17 hearing or at a later time), the appointing authority must rule upon the request according to the standards set in its indigent defense plan. The indigent defense plan provides the following standard of indigence:

An accused is presumed indigent if any of the following conditions or factors are present:

- 1. At the time of requesting appointed counsel, the accused or accused’s dependents are eligible to receive food stamps, Medicaid, Temporary Assistance for Needy Families, Supplemental Security Income, or public housing;*
- 2. The accused’s net household income does not exceed 100% of the Poverty Guidelines as revised annually by the United States Department of Health and Human Services and published in the Federal Register; or*

3. The accused is currently serving a sentence in a correctional institution, is currently residing in a public mental health facility, or is subject to a proceeding in which admission or commitment to such a mental health facility is sought.

Following the determination of indigence, the county must put in place procedures to either appoint counsel or document the denial of court appointed counsel. This appointment/denial must occur within the timeframe established by Article 1.051 (within 3 working days). Under Article 1.051(f-1) and (f-2) of the Code of Criminal Procedure, if a defendant has requested counsel and pleads pro se, the associated waiver of counsel is presumed invalid unless the request for counsel has been denied.

Conclusion

The monitor appreciated the professionalism and assistance provided by Childress County officials and staff. Childress County officials appear willing to make necessary changes to improve the indigent defense system. As mandated by statute, the Commission will monitor the County's transition and process improvements regarding the report's recommendation.

Appendix – Childress County Magistrate Warning Form

CAUSE NO. 21,146

THE STATE OF TEXAS

§

IN THE COUNTY COURT

VS.

§

OF

[REDACTED]

§

CHILDRESS COUNTY, TEXAS

WARNING OF RIGHTS

Before me, the undersigned magistrate of the State of Texas, on this day personally appeared [REDACTED] and said person was given the following warning by me:

(Check while reading)

- 1. ✓ You are charged with the offense of Possession of Marijuana.
- 2. ✓ You have the right to hire a lawyer and have him/her present prior to and during any interview and questioning peace officers or attorneys representing the State. If you are too poor to afford a lawyer, you have the right to request appointment of a lawyer to be present prior to and during any such interview and questioning. You may have reasonable time and opportunity to consult your lawyer if you desire.
- 3. ✓ You have the right to remain silent.
- 4. ✓ You are not required to make a statement, and any statement you make can and may be used against you in Court.
- 5. ✓ You have the right to stop any interview or questioning at any time.
- 6. ✓ You have the right to an examining trial.

*Your bail is set at \$ 4500.

*Bail is not determined.

Person warned: [Signature]

Magistrate: [Signature]

Title: Co Judge

Place of Warning: Co Jail

Time: 2:15 p

Date: 12-16, 2013

FILED FOR RECORD
CHILDRESS COUNTY, TEXAS
2013 DEC 16 PM 4:02
ZONA PRINCE
DISTRICT-COUNTY CLERK

WITNESSES:

Name: _____ Address: _____ City: _____

Remarks: _____